IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3192 of 2004

and

SPECIAL CIVIL APPLICATION No 3510 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUSUB SIDDIQUI

Versus

RANGE FOREST OFFICER

Appearance:

1. Special Civil Application No. 3192 of 2004
MR TR MISHRA for Petitioner No. 1
MR MS RAO, AGP for Respondent

2. Special Civil Application No.3510 of 2004
Mr.TR MISHRA for the petitioner
Ms.Falguni Patel, AGP, for the respondent.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 12/07/2004

ORAL JUDGEMENT

Rule. Mr.M.S.Rao appears and wsaives service of notice of rule on behalf of the respondent in Special Civil Application No.3192 of 2004 and Ms.Falguni Patel appears and waives service of notice of rule on behalf of the respondent in Special Civil Application No.3510 of 1994.

2. These two petitions are decided by a common order in view of the fact that the issues raised in both the petitions are common and identical.

3. For the sake of convenience one may peruse the facts narrated in Special Civil Application No.3192 of 2004. The petitioner is challenging the award dated 15.11.2003 passed by the Labour Court, Jamnagar, by which the reference raised at the instance of the petitioner came to be rejected on the ground that the petitioner had not succeeded in establishing that he had worked for 240 days during the 12 calendar months preceding the date of termination. The learned advocate for the petitioner has assailed the award on various grounds. The learned advocates for the Government, however, contend that the respondent is not an 'industry' and that therefore the Labour Court ought to have rejected the reference not only on the ground of non-violation of the provisions of section 25-F of the Industrial Disputes Act, but also on the ground that the respondent is not an industry and therefore the industrial dispute was not maintainable.

4. From the impugned award, I find that the respondent had taken a specific plea that the respondent is not an industry within the meaning of the Industrial Disputes Act and that the respondent is not carrying on any trade or business and is discharging sovereign functions of the Government and that therefore the industrial dispute is not maintainable. From the perusal of the award I find that though a specific objection was raised by the respondent with respect to the question of jurisdiction of the Labour Court on the ground that the respondent is not an industry within the meaning of the Industrial Disputes Act, no issue was raised by the Labour Court in this regard nor any finding arrived at with respect to the objection raised by the respondent.

5. The learned advocate for the respondent contends that in view of the Full Bench judgment of this High Court in the case of Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, the Forest

Department is held not an industry within the meaning of section 2(j) of the Industrial Disputes Act. Learned advocate for the petitioner Mr.Mishra, however, contends that the Full Bench decision mentioned above does not lay down any inviolable or inflexible rule and the Full Bench has held that the case is required to be examined by the Labour Court in each case depending on the facts emerging from the record.

6. Considering the above submissions, I am of the view that the matters are required to be remanded for the purpose of deciding the issue whether the respondent is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act or not. As discussed earlier, I find that though the respondent had specifically contended before the Labour Court that the respondent is not an 'industry' within the meaning of the Industrial Disputes Act, no issue in this regard was raised nor any conclusion arrived at in this regard. I am therefore of the opinion that the matters are required to be remanded to the Labour Court for fresh adjudication on the above issues. For the said purpose, I quash and set aside the impugned award dated 15.11.2003 passed by the Labour Court, Jamnagar in Reference (LCJ) No.1996/90 as well as Reference (LCJ) No.1999/90 and remand the matter to the Labour Court to decide the issue afresh keeping in view the decision of the Full Bench decision of this Court mentioned above and to give a definite conclusion whether the respondent is an industry or not. In view of the fact that the awards of the Labour Court are set aside, I refrain from making any observations with respect to the rival contentions regarding completion of 240 days by the workmen. The Labour Court will decide the same simultaneously at the time of deciding the reference afresh.

7. In view of the above directions, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)